

Message

From: Wilcut, Lars [Wilcut.Lars@epa.gov]
Sent: 3/19/2020 1:56:18 PM
To: Fleisig, Erica [Fleisig.Erica@epa.gov]
Subject: FW: What my question is RE: 131.10(b)

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Thursday, March 19, 2020 9:10 AM
To: Wilcut, Lars <Wilcut.Lars@epa.gov>; Barash, Shari <Barash.Shari@epa.gov>
Subject: RE: What my question is RE: 131.10(b)

Thanks, Lars.

From: Wilcut, Lars <Wilcut.Lars@epa.gov>
Sent: Wednesday, March 18, 2020 7:34 PM
To: Sweeney, Stephen <Sweeney.Stephen@epa.gov>; Barash, Shari <Barash.Shari@epa.gov>
Subject: RE: What my question is RE: 131.10(b)

Ex. 5 Deliberative Process (DP)

Lars

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Wednesday, March 18, 2020 7:02 PM
To: Barash, Shari <Barash.Shari@epa.gov>; Wilcut, Lars <Wilcut.Lars@epa.gov>
Subject: RE: What my question is RE: 131.10(b)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

From: Barash, Shari <Barash.Shari@epa.gov>
Sent: Wednesday, March 18, 2020 6:36 PM
To: Wilcut, Lars <Wilcut.Lars@epa.gov>; Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Subject: RE: What my question is RE: 131.10(b)

Steve,

The footnote says: "The EPA interprets the term "downstream" to include both intra- and interstate waters, as well as waters that form a boundary between adjacent jurisdictions."

I just wanted to make sure you also understood that the part about "waters that form a boundary between adjacent jurisdictions" means "across stream" – meaning when you have a water that is divided down the length between two jurisdictions like the Miss R.

Shari

Shari Z. Barash
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From: Wilcut, Lars <Wilcut.Lars@epa.gov>
Sent: Wednesday, March 18, 2020 4:40 PM
To: Sweeney, Stephen <Sweeney.Stephen@epa.gov>; Barash, Shari <Barash.Shari@epa.gov>
Subject: RE: What my question is RE: 131.10(b)

Steve,

That footnote was an attempt to make the point that 40 CFR 131.10(b) applies to designated uses downstream, whether or not they're in a different state. We did that because up until the last decade or so, people really only (incorrectly) thought about interstate waters when they thought about downstream.

An example where we've applied this in-state is the El Dorado case in Region 6, where we disapproved based on that provision. We ultimately prevailed in circuit court. I think Jessica Zomer worked on that case.

Lars

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Wednesday, March 18, 2020 3:48 PM
To: Barash, Shari <Barash.Shari@epa.gov>; Wilcut, Lars <Wilcut.Lars@epa.gov>
Subject: What my question is RE: 131.10(b)

In the first footnote on the first page, we say that we interpret the reg to require protection of intrastate and interstate uses.

Is that for interstate WATERS only? Or for waters is downstream states?

If the latter, can either of you call an instance where EPA's interpretation might have been applied? Or is it more that the clarity of the interpretation is too new?